STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0168

Christensen Farms & Feedlots, Inc.,
Appellant,

vs.

Paul Platz, et al.,
Respondents.

Filed January 13, 2009
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Sibley County District Court
File No. 72-CV-07-2

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Respondents terminated their contract with appellant and appellant sued. After the district court denied appellant's motion for summary judgment, a jury trial was held on

whether appellant was entitled to an early termination fee under the terms of the contract. During that jury trial, the district court issued a directed verdict in appellant's favor on the issue of whether appellant had waived that fee and found that a portion of the contract addressing early termination was ambiguous. After the jury resolved that issue in respondents' favor by answering a question on the special verdict form, the district court dismissed appellant's case. We hold that the district court properly issued a directed verdict on the waiver issue, but because the challenged portion of the contract is not ambiguous, appellant is entitled to judgment as a matter of law on the termination fee. Because reasonable attorney fees owed to appellant were not determined, we affirm in part, reverse in part, and remand.

FACTS

This case involves a contract dispute between respondents Paul and Donita Platz and appellant Christensen Farms & Feedlots, Inc. In 1996, respondents and appellant entered into a contract in which appellant paid respondents a monthly fee to raise its pigs on their farm.[1] The initial term of the contract was ten years. Appellant had the option to extend the contract, at a reduced rate, for up to three additional five-year terms. The contract also provided respondents the right of early termination:

> 10.0 Right of Early Termination.
>
> [Respondents] may terminate this Agreement only upon the following conditions:

[1] The original contract was modified on December 7, 2004, pursuant to an agreement between the parties. The contract referred to in this opinion contains the 2004 modifications.

A. 364-days' written notice of termination to [appellant].

B. Cash payment to [appellant] within sixty days of said notice in an amount equal to $1.00 per pig for the number of pigs that [appellant] could have finished at [appellant's] facility over the remaining balance of the twenty-five year contract term. [Respondents] agree[] that [appellant] can finish 12,960 pigs per year at the facility.

C. Proof of release of [appellant] (in a form acceptable to it) of and from any and all financial and/or other liability whether fixed, contingent or unliquidated that [appellant] may have on account of [respondents'] facility.

D. [Appellant] agrees to waive the cash payment required in Paragraph B. above, if [respondents] establish[] to [appellant's] reasonable satisfaction th[at] [respondents] will be the sole and whole owner[s] of the livestock placed in the facility, and [are] using conventional financing without outside guarantees from any agri-business firm.

The contract also obligated respondents to construct five barns for hog production on their property. In order to finance the construction of the barns, respondents obtained a loan from AgStar Financial Services, PCA in exchange for a mortgage on their property. Appellant guaranteed AgStar's loan to respondents in exchange for a personal guarantee from respondents and a junior mortgage on their property in the amount of $880,215. Respondents have since satisfied their obligation to AgStar. This satisfaction is reflected by a release of mortgage that was recorded on February 1, 2007.

Under the terms of the contract between appellant and respondents, the ending date of the initial term was December 31, 2006. The contract provided that appellant would supply respondents with 1,040 pigs to care for per barn. In exchange, respondents would receive $192,000 per year from appellant during the initial ten-year term. If the

contract was extended by appellant, respondents would receive $144,000 per year for the term of any extension.

On December 20, 2005, counsel for respondents sent appellant's attorney a notice of termination informing appellant they would terminate the contract effective January 1, 2007: "This letter is notice under paragraph 10 of the independent contractor agreement dated June 19, 1996 that [respondents] terminate the agreement, effective January 1, 2007." The letter then went on to outline how respondents intended to receive outside financing, without a guarantee from an agri-business firm, to fund the purchase of their own pigs. The letter concluded with the qualification that "[i]f, for some reason, after reviewing this letter and any other information, [appellant] is not reasonably satisfied that the conditions in paragraph 10d are satisfied so that the fee is waived, and that position is confirmed by legal process, then [respondents] do not intend to terminate the agreement."

On February 16, 2006, after respondents were unable to obtain financing for the purchase of their own pigs, respondents sent appellant a letter requesting to withdraw their notice of termination. On February 21, 2006, appellant replied by letter. It informed respondents, among other things, that the notice of termination had not been rescinded, that it considered the contract terminated, that respondents owed it $194,400, and that this obligation was past due. After attempts to reach a compromise failed, appellant initiated this suit on December 28, 2006, in hopes of foreclosing on its mortgage and collecting its early termination fee.

Both parties moved for summary judgment. In an order dated July 10, 2007, the district court denied both motions, concluding that (1) respondents' December 20, 2005,

notice of termination was not conditional,[2] (2) appellant effectively extended its option for three additional five-year periods, and (3) "[t]here is a material issue of fact as to whether [respondents] timely established that [appellant] should have been reasonably satisfied that [respondents were] to be the sole and whole owner of the livestock to be placed in the facility, and that [respondents were] using conventional financing without outside guarantees from any agri-business firm."

[2] On this point, the district court reasoned:

> [Respondents'] true intent was to effectuate the terms of early termination as laid out in clauses A through D of Section 10.0 of the [contract.] [Appellant] could not have been misled to believe, and in fact was not misled to believe, any understanding other than the fact that [respondents'] notice put the [contract's] conditions of early termination into action. The word "if" in [respondents'] notice connotes neither a condition hinged to the notice nor an offer subject to [appellant's] acceptance. The words "if" and "then" are used by [respondents] to relay to [appellant] that **after** the early termination conditions are put into action, **if** it is [appellant's] position that [respondents] must pay a cash payment, **then**, [respondents] inten[d] to have [appellant's] position confirmed by legal process and in conjunction does not intend to terminate the agreement. This is simply a notice of [respondents'] later intention which is wholly separated from [respondents'] notice to effectuate Section 10.0 of the [contract.]
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> [Respondents'] notice of [their] contingent intentions is not an offer capable of acceptance by [appellant] within neither the parties' true intent, agreement, nor purpose of trade. The parties' intention was that a proper notice trigger [respondents'] right to establish the conditions of early termination.

In a pretrial order dated August 8, 2007, the district court found that there was an ambiguity regarding early termination in section 10.0 of the contract:

> Section 10.0 of the [contract] is reasonably susceptible to more than one interpretation. It can be read that the notice terminates the [contract] and that the cash payment must be paid unless it is waived by [appellant.] On the other hand it can be read that unless [respondents] satisf[y] all of the conditions the [contract] must continue. Does the right to terminate as vested in [respondents] obligate [appellant] to continue the [contract]? Should a [pig farmer] who satisfies the notice and cash payment conditions but fails to satisfy the proof of release condition remain obligated to pay the cash payment? This ambiguity results in a question of fact that must be presented to a jury.

The case then proceeded to trial on August 14-15, 2007. After the close of evidence, the district court granted a directed verdict in favor of appellant on the waiver issue, ruling that respondents did not provide timely information which would reasonably satisfy appellant that respondents would be the sole owners of the livestock to be placed in their facility and that they would use conventional financing without outside guarantees from any agri-business firm. After this ruling, the district court submitted the following special verdict question to the jury: "[Do respondents] owe the early termination fee under the contract?" The jury answered "No." As a consequence, the district court dismissed appellant's case against respondents.

After the district court's dismissal of the case, both parties brought a number of posttrial motions. In an order dated December 26, 2007, the district court denied appellant's motions for a judgment as a matter of law, a new trial, and to vacate the judgment, and dismissed appellant's action against respondents. The district court also

ordered appellant to deliver to respondents a release of their mortgage and personal guarantee. This appeal follows.

D E C I S I O N

Appellant contends that section 10.0 of the contract is not ambiguous and should be read so that the notice by respondents of their intent to terminate the contract early terminated the contract and required respondents to make the contractually required payment to appellant. We agree.

"Where the intention of the parties can be determined wholly from the writing, the construction of the instrument is a question of law for the court to resolve." *Wolfson v. City of St. Paul*, 535 N.W.2d 384, 386 (Minn. App. 1995) (citing *Empire State Bank v. Devereaux*, 402 N.W.2d 584, 587 (Minn. App. 1987)), *review denied* (Minn. Sept. 28, 1995). "This court is not required to defer to the trial court's findings," and the construction and effect of an unambiguous contract are questions of law which we review de novo. *Id.* Where the language of a contract is plain and unambiguous, this court must enforce the contract as written. *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). Contract language "is ambiguous if it is reasonably susceptible of more than one construction." *Collins Truck Lines v. Metro. Waste Control Comm'n*, 274 N.W.2d 123, 126 (Minn. 1979). "In order to be ambiguous in the legal sense, both constructions must be reasonable." *Id.*

Section 10.0 of the contract provided respondents with a means of terminating the contract early. It states that "[respondents] may terminate this agreement only upon the following conditions," and then lists four putative conditions that must be met in order to

terminate the contract. Respondents contend that because these four "conditions" were not met, they should not be required to pay the early termination fee specified in the contract. The flaw in this reasoning is that the four purported "conditions" listed in section 10.0 of the contract are not all actual conditions.

Only clauses A and B of section 10.0 are conditions of early termination that must be met by respondents. Clause A provides respondents with a means of terminating the contract by providing 364-days' written notice. Respondents exercised this option when, in a letter dated December 20, 2005, they informed appellant that they "would terminate the agreement, effective January 1, 2007." Respondents claim that this unequivocal language was not an effective notice of termination because a qualification at the end of the letter stated that they did not intend to terminate the contract unless appellant waived the early termination fee. This position is unsupported by the plain language of section 10.0. Clause A of section 10.0 specifies how the contract may be terminated early. Specifically, it requires 364-days' written notice. Respondents provided this notice. They cannot now attempt to rewrite section 10.0 by making their notice contingent upon appellant's waiver of the early termination fee. The contract was terminated by respondents' December 20, 2005 letter.

Clause B is also a condition of early termination. It requires that respondents make the specified payment of $194,400 within 60 days of the notice referred to in clause A. It is undisputed that respondents did not make the required payment. Their failure to do so constituted a breach of the contract.

Clauses C and D are not conditions of the contract. In conjunction, they merely provide respondents with a means of avoiding the payment required by clause B. Respondents were not under an obligation to satisfy clauses C or D to terminate the contract, and the fact that they failed to satisfy the requirements of clauses C and D does not invalidate their termination of the contract or excuse their breach of the contract. To have avoided making clause B's required payment, respondents would have had to have met the requirements of clauses C and D. As the directed verdict issued by the district court establishes, respondents failed to meet the requirements of clause D and appellant did not waive the payment. Specifically, respondents failed to establish to appellant's reasonable satisfaction that respondents would be the sole owners of the livestock to be placed in the facilities and that they would use conventional financing without outside guarantees from any agri-business firm.

Thus, the district court erred when it concluded that section 10.0 of the contract was ambiguous. Clauses A and B were the only conditions of early termination. Respondents' December 20, 2005 letter met the requirements of clause A and acted as an effective termination of the contract. Respondents did not make the payment required by clause B. This payment was not waived by appellant. Since the amount of the early termination fee is not in question, respondents' failure to make the required payment was a breach of the contract. We reverse and remand for entry of judgment for appellant in the amount of $194,400 and for calculation of costs and reasonable attorney fees.[3]

[3] A mortgage agreement between appellant and respondents, under the paragraph labeled "8. Protection of [appellant's] Security," provides:

Respondents request that we address three issues set forth below. First, respondents contend that the early termination notice they gave to appellants was conditional upon granting a waiver of the early termination fee. This contention is unavailing. Respondents cannot rewrite section 10.0 to deprive appellant of the right to refuse to waive the early termination fee. Section 10.0 does not provide for a conditional notice of termination, and respondents cannot successfully contend that such a notice was permissible under the contract.

Second, respondents argue that the district court erred in finding that appellant did not exercise its option to extend the contract. A reviewing court is bound to accept a district court's conclusions of law if they are dictated by sustainable findings of fact. *Pelican Group of Lakes Improvement Dist. v. Minn. Dep't of Natural Res.*, 589 N.W.2d 517, 518-19 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the

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> All amounts disbursed or incurred by [appellant] pursuant to this paragraph 8, including (without limitation) reasonable attorneys' fees, with interest thereon at the rate of 8% per annum (or at any lesser rate which may then be the highest rate permitted by law), shall be additional indebtedness of [respondents], payable on demand, and shall be secured by this Mortgage.

The mortgage secured "payment of . . . [the] related costs of enforcement and collection expenses, pursuant to said Guaranty." The "Guaranty" secured the "payment and performance of each and every debt, liability and obligation of every type which [respondents] may now or at any time hereafter owe to [appellant.]" Thus, as a result of respondents' breach of contract and the interplay between the parties' mortgage and guaranty, appellant is entitled to reasonable attorney fees.

credibility of the witnesses." Minn. R. Civ. P. 52.01. When explaining its basis for this finding, the district court stated, "Depositions as well as letters from [appellant's attorney] to [respondents' attorney] clearly indicate that [appellant] effectively exercised its option to extend the [contract.]" The district court's finding on this point is not clearly erroneous.

Third, respondents argue that the district court erred in granting appellant's motion for a directed verdict on questions 1 and 2 of the special verdict form. Question 1 asked: "Did [respondents] timely provide information to [appellant] to reasonably satisfy [appellant] that [respondents] would be the sole and whole owner of the livestock to be placed in the [respondents'] facility?" Question 2 asked: "Did [respondents] provide timely information to [appellant] to reasonably satisfy [appellant] that [respondents were] using conventional financing without outside guaranties from any agri-business firm?" A motion for a directed verdict presents the trial court with a question of law: Is the evidence sufficient to present a fact question for the jury? *Claflin v. Commercial State Bank of Two Harbors*, 487 N.W.2d 242, 247 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992). In reviewing a directed verdict, appellate courts review the evidence and its inferences to determine independently whether the evidence is sufficient to present a fact question for the jury. *Nemanic v. Gopher Heating & Sheet Metal, Inc.*, 337 N.W.2d 667, 669 (Minn. 1983). A directed verdict is sustainable only if it would clearly be the duty of the trial court to set aside a contrary verdict as against the evidence or contrary to the law of the case. *Id.* at 669-70.

The contract's termination on December 20, 2005 triggered a 60-day window in which respondents had the opportunity to establish to appellant's reasonable satisfaction that respondents would be the sole owners of any new livestock and that respondents would use outside financing without any outside guarantees from any agri-business firm. Respondents do not point to any communications that met these requirements. In fact, respondents' February 16, 2006 letter, explicitly informed appellant that they wished to withdraw their notice of termination since they were unable to find a supplier of livestock because their anticipated supplier was "not entering into any new Minnesota contracts." Respondents did not mention other possible livestock suppliers. The February 16, 2006 letter stated that respondents have "a commitment for financing with Agstar." The letter does not provide any documentation of this commitment, nor does it claim that this commitment was obtained without the guarantee of an agri-business firm. Given the lack of information provided to appellant by respondents within the specified 60-day window, it would have been against the evidence for the jury to conclude that respondents had met appellant's reasonable satisfaction that they would be the sole and whole owners of any livestock placed within the facility and that they would obtain outside financing without the guarantees of an agri-business firm. As a result, the district court's decision to direct a verdict on questions 1 and 2 of the special verdict form was appropriate.

To summarize, we affirm the district court's grant of a directed verdict on the issue of waiver but reverse the district court's ruling that the contract's provision on early termination was ambiguous. We remand to the district court for entry of judgment in the

amount of $194,400 in favor of appellant and for a calculation of reasonable attorney fees and costs in favor of appellant.

Affirmed in part, reversed in part, and remanded.